

**Council Senate Members**  
TOM BECK - CHAIRMAN  
B.F. "CHRIS" CHRISTIAENS  
VICKI COCCHIARELLA  
MACK COLE  
STEVE DOHERTY  
FRED THOMAS



**Council House Members**  
KIM GILLAN - VICE  
CHAIRMAN  
GEORGE GOLIE  
DANIEL MCGEE  
DOUG MOOD  
BRAD NEWMAN  
MARK NOENNIG

**Executive Director**  
LOIS MENZIES

**Director**  
DAVID D. BOHYER

**Library**  
LISA JACKSON  
BENTLEY UTGAARD

**Information Officer**  
MARSHA SAGER

**Montana Legislative  
Services Division  
Office of Research and Policy Analysis**  
PO BOX 201706  
Helena, Montana 59620-1706  
(406) 444-3064  
FAX (406) 444-3036

**Research Analysts**  
CONNIE ERICKSON  
SUSAN FOX  
SHERI S. HEFFELFINGER  
GORDON HIGGINS  
LEANNE KURTZ  
STEPHEN B. MALY  
JEFF MARTIN

**Secretaries**  
LOIS O'CONNOR  
MIKO OWA

June 7, 2002

TO: Tourist Tax Advisory Council

FROM: Jeff Martin, Legislative Research Analyst

SUBJECT: General and Selective Sales Tax Bills

Since at least 1987, the Montana Legislature has considered a wide variety of broad-based sales tax (or gross receipts tax) bills and a few selective sales tax bills. Some suffered a slow, agonizing death, while others were hardly noticed. Senate Bill No. 235, considered in 1993, was the only major sales tax bill to pass both houses of the Legislature; it was subsequently rejected by the voters.

The purpose of this memorandum is to summarize the provisions of a selective sales tax bill and two general sales tax bills. For each bill, the summary includes the title, proposed effective dates and applicability dates of the sales tax, sponsors, estimated revenue from the tax, exemptions, and its fate.

**Senate Bill No. 439 (Sen. Lorents Grosfield, 2001 Legislative Session).** Generally revising the laws governing tourism and tourism promotion; revising the lodging facility use tax; clarifying that the tax is paid by the consumer; increasing the tax rate; providing an income and corporation tax credit for all lodging facility use taxes and all rental vehicle surcharges paid; revising the allocation of the tax; providing that the owner or operator of a lodging facility keeps 5 percent of the tax for administering the collection of the tax; providing that the balance of the lodging facility use tax and rental vehicle surcharge that is not otherwise allocated be deposited for the use of K-12 education; establishing a rental vehicle surcharge; providing that the proceeds of the surcharge be distributed together with the proceeds of the lodging facility use tax; providing for the administration of the surcharge and providing for penalties and interest; requiring that a rental vehicle owner or operator must have a permit to operate; providing that the rental vehicle owner

or operator keeps 5 percent of the surcharge for administering the collection of the surcharge; creating the community heritage grant program; creating the main street program; creating the Montana business marketing and recruitment program.

- Effective July 1, 2001
- Applicable to accommodation charges collected (and, for purposes of tax credit, paid) and rental vehicle receipts collected (and, for purposes of tax credit, paid) after June 30, 2001
- Other sponsors: Sen. Bohlinger, Sen. Christiaens, Sen. Crismore, Rep. Jent, Sen. Stonington, Rep. Witt

Senate Bill No. 439 would have increased the lodging facility use tax from 4% to 9% and, as amended in the Senate, would have imposed a 9% tax on the rental base price, exclusive of insurance, for rental vehicles. The bill would have allowed an income tax credit for all lodging facility use taxes and rental car surcharges paid. The bill would have allowed the owner of a lodging facility and the owner of rental vehicles to retain 5% of the amount collected as an administrative allowance. Table 1 shows the estimated gross and net collections from the two taxes for fiscal year 2002.

<b>Table 1: Estimated Revenue From Increasing Lodging Tax and Imposing Rental Car Surcharge, SB 439</b>			
	Lodging Facility Use Tax	Rental Car Surcharge	Total Revenue
9% Tax Rate	\$27,509,929	\$3,969,000	\$31,478,929
5% Admin. Fee	1,375,496	198,450	1,573,946
Tax Credit	770,278	188,258	958,536
Net Revenue	\$25,364,155	\$3,582,292	\$28,946,447
Exemptions	Facilities rented for a period of 30 days or more	Vehicle rented under an insurance contract or provided to a customer while own vehicle is being repaired	This space intentionally left blank.

Source: Revised Fiscal Note, SB 439, Office of Budget and Program Planning

The amount of net revenue shown in the table for the lodging facility use tax is not all new revenue because the current tax rate is 4%. According to the fiscal note, the new revenue from the rate increase would have been \$15.3 million in fiscal year 2002.

The bill would have increased the distribution of revenue to existing recipients of the lodging facility use tax (Historical Society, university system, Department of Fish, Wildlife, and Parks, Department of Commerce, and regional tourism corporations) and would have provided revenue to new recipients (heritage preservation account, local governments, Lewis and Clark Bicentennial Commission, and the "main street program"). The single largest distribution would have been \$10.7 million for public school equalization.

The bill passed the Senate by a vote of 30 to 17, but was tabled in the House Taxation Committee.

**Senate Bill No. 525 (Sen. Gerry Devlin, 1999 Session).** Enacting a 4 percent sales tax and use tax on selected goods and tourism services; allowing certain sales tax and use tax exemptions; providing for distribution of sales tax and use tax revenue; replacing the current system of taxation of automobiles, vans, sport utility vehicles, and light trucks with an annual \$50 fee in lieu of tax on light vehicles; allowing the owner of a light vehicle to register the vehicle for a 24-month period; allowing vehicles 11 years old and older to be permanently registered; providing a reimbursement to local taxing jurisdictions; allowing a county to impose a local option fee in lieu of tax on motor vehicles with voter approval; providing significant property tax relief to homeowners, renters, commercial property owners, and other property taxpayers; revising bonding, debt, and levy limits for local governments and schools as a result of comprehensive tax reform; revising certain provisions of local government finance and school finance as a result of comprehensive tax reform; reducing the public contractor's license fee; providing for an election on the question of whether or not to impose a 4 percent statewide, general retail sales tax and use tax.

- Effective on approval by the electorate in November 2000
- Sales tax applicable to tax years beginning after December 31, 2000
- Other sponsors: None

Senate Bill No. 525 would have imposed a 4% retail sales tax and use tax on most goods and on selected services. The governor's budget office estimated that total sales tax collections in fiscal year 2002 would have been about \$331 million. Businesses would have been allowed to retain 1.5% of sales tax liabilities as a vendor allowance. The bill would also have eliminated property taxes on rail cars, class eight business equipment, and class six livestock and would have replaced the 2% ad valorem tax on motor vehicles with a \$50 flat fee. Additional property tax relief would have been provided by doing away with the county elementary and high school equalization levies (55 mills) and the state equalization aid levy (40 mills). Reimbursements to local governments for previous reductions in the property tax rates on business equipment would have been eliminated.<sup>1</sup>

Sen. Devlin also sponsored three constitutional amendments for referral to the electorate that would have prohibited the reimposition of the property taxes that would have been eliminated by the bill. Senate Bill No. 526 would have prohibited the imposition of property taxes on real and personal property to fund education. Senate Bill No. 527 would have prohibited the imposition of property taxes on business equipment, passenger vehicles, and light trucks. Senate Bill No. 528 would have prevented the imposition of property taxes on the value of livestock and poultry. The

---

<sup>1</sup>Enacted during the 1989 Special Session, HB 20 (Ch. 10, Sp. L. 1989) combined most business equipment into a single property class with a single tax rate of 9%. Enacted during the 1995 Regular Session, SB 417 (Ch. 570, L. 1995) reduced the tax rate on business equipment from 9% to 6% over a 3-year period. In each measure, the Legislature provided reimbursements to local governments to offset lost property tax revenue.

sales tax bill and the proposed constitutional amendments were tabled in the Senate Taxation Committee.

**Senate Bill No. 235 (Sen. Bruce Crippen, by request of the Governor, 1993 Session).**

Generally revising taxation; enacting a 4 percent sales and use tax; allowing exemptions from the sales tax and use tax; exempting certain property from taxation; revising debt limits for local governments and schools; revising individual income taxes and property taxes; allowing credits against individual income tax liability; providing for distribution of sales tax and use tax revenue; providing state support for certain school funding; providing that this act be submitted to the qualified electors of the state at a special election.

- Effective on approval by the electorate (special election held June 8, 1993)
- Sales tax applicable April 1, 1994
- Other sponsors: None

Senate Bill No. 235 would have imposed a 4% retail sales tax on most goods and services, simplified and reduced the individual income tax, and provided significant property tax relief. According to the second reading fiscal note, the sales tax would have raised about \$282 million, net of a 2.5% vendor allowance, in fiscal year 1995.

In testimony before the Senate Taxation Committee, Sen. Crippen said that the bill would replace an outdated tax system that was inequitable, lacked consistency and stability, impeded economic growth and job creation, and hurt Montana families. The bill was also intended to alleviate the state's chronic structural budget deficit. The bill, according to Sen. Crippen, was designed to eliminate the public perception that Montana was a high income tax state and uncompetitive in the taxation of business equipment.

The measure passed the Senate by a 25 to 24 vote and the House by a 50 to 49 vote and was referred to Montana voters at a special election on June 8, 1993; it was defeated by a margin of 3 to 1.<sup>2</sup>

Both Senate Bill No. 235 and Senate Bill No. 525 would have broadly taxed the retail sale of tangible personal property. Senate Bill No. 235 would also have broadly taxed the retail sale of services. A retail sale of a good or service (e.g., accounting and legal services) would be subject to the sales tax or use tax unless specifically exempt. Although Senate Bill No. 525 would have generally exempted services, it identified specific services that would have been subject to the sales and use tax. Table 2 (see page 6) shows the exemption provisions contained in each bill. Many of the exemptions are goods or services used as an "input" for a business.

Both bills also provided for the "nontaxability" of certain sales. A nontaxable event may occur

---

<sup>2</sup>The Legislature also referred a constitutional amendment (Senate Bill No. 289, sponsored by Sen. Crippen) to the voters that limited a general sales tax to 4%. The measure was approved by voters on Nov. 8, 1994 (175,618 to 150,469).

when a good or service normally subject to tax is not taxed because:

- the sale of property or service is intended for resale;
- the sale or lease of property is intended for lease;
- the sale of property is incorporated as an ingredient or component part of a product;
- the sale of property or service is a transaction in interstate commerce; or
- the sale of property or service is to an entity that the Legislature does not want to tax.

The purpose of most nontaxable events is to minimize pyramiding (or imposing a tax on a tax) of the sales tax. A transaction in interstate commerce is nontaxable to the extent that the imposition of the sales tax or use tax would be unlawful under the federal Constitution. Table 3 (page 8) compares the nontaxability provisions contained in each bill.

<b>Table 2: Sales Tax Exemptions Contained in SB 235 (1993) and SB 525 (1999)</b>			
Exempt categories	SB 235	SB 525	Comment
Motor vehicles	Exempt	Exempt	Sales tax under Title 61, MCA
Sales by or to government agencies	Exempt	Exempt	Exemption includes federal government, Indian tribes, the state, and local governments
Utility services--energy, water, refuse collection, telecommunications	Exempt	Exempt	SB 235 would have taxed cable TV services
Food products for human consumption--groceries	Exempt	Exempt	As defined under the federal food stamp program
Food or a food service offered or delivered as part of a residential living arrangement	Exempt	Exempt	
Food purchased under the special supplemental food program for women, infants, and children (WIC)	Exempt	Exempt	Federal law prohibits taxation under this program
Sales to nursing facility subject to the utilization fee	Exempt	Taxed--goods	
Prescribed medicine, drugs, and certain devices--medical services	Exempt	Exempt	
Wages	Exempt	Exempt	Includes wages, salaries, or commissions paid by employer to employee
Agricultural products, livestock feeding	Exempt	Exempt	
Gambling and amusement services	Exempt	Exempt	Establishments that are licensed under Title 23, ch. 4, 5, or 7
Insurance premiums	Exempt	Exempt	
Dividends and interest, commissions from sale of securities or insurance	Exempt	Exempt	
Fuel	Exempt	Exempt	Provided tax has been paid under Title 15, ch. 70, or fuel is otherwise exempt from taxation
Isolated or occasional sale or lease of property or services	Exempt	Exempt	
Oil, gas, and mineral interests	Exempt	Exempt	As defined in 15-38-103, MCA
Minerals	Exempt	Exempt	As defined in 15-38-103, MCA. Exemption not identical
Personal effects	Exempt	Exempt	
Advertising	Exempt	Exempt	SB 525 services exemption
Printed material	Taxed	Exempt	

<b>Table 2 Continued: Sales Tax Exemptions Contained in SB 235 (1993) and SB 525 (1999)</b>			
Exempt Categories	SB 235	SB 525	Comments
Day-care services	Exempt	Exempt?	SB 525 services exemption
Feed, fertilizers, and agricultural services	Exempt	Exempt	
Certain chemicals, reagents, and substances	Exempt	Exempt	Consumed in refining process
Sale of certain services of mining or manufacturing	Exempt	Exempt	Related to processing a product
Transportation services	Exempt	Exempt	SB 525 services exemption
Private school tuition	Exempt	Exempt	SB 525 services exemption
Construction services	Exempt	Exempt	SB 525 services exemption
Rehabilitation services	Exempt	Exempt	SB 525 services exemption
Sales by social or family services organizations	Exempt	Exempt	SB 525 services exemption
Sales by museum, art gallery, arboretum, or botanical or zoological garden	Exempt	Taxed--goods	
Sales by nonprofit membership organization	Exempt	Taxed--goods	
Services	Taxed, unless otherwise exempt	Exempt, unless otherwise taxed	SB 525 taxable services: <ul style="list-style-type: none"> <li>• sightseeing</li> <li>• <b>personal services</b></li> <li>• rental vehicles</li> <li>• lodging</li> <li>• equipment rentals</li> <li>• motor vehicle repair</li> </ul>

<b>Table 3: Nontaxable Provisions Contained in SB 235 (1993) and SB 525 (1999)</b>			
Nontaxable transactions	SB 235	SB 525	Comment
Certain nonprofit organizations with exempt property	Nontaxable	Taxable	
Sale of property or service for resale	Nontaxable	Nontaxable	Eliminates pyramiding
Sale to miner or manufacturer	Nontaxable	Nontaxable	Ingredient or component part rule
Sale of tangible personal property for leasing	Nontaxable	Nontaxable	Eliminates pyramiding
Lease for subsequent lease	Nontaxable	Nontaxable	Eliminates pyramiding
Sale or lease of real property and lease of mobile homes	Nontaxable	Nontaxable	SB 235 would have taxed (2.5%) mobile homes and manufactured homes not improvements to real property
Transactions in interstate commerce	Nontaxable	Nontaxable	
Sale of certain services to out-of-state buyer	Nontaxable?	Nontaxable	No nexus within the state
Use of property for leasing	Nontaxable	Nontaxable	

CI0425 2156jfq.